



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007
January 22, 1976

R75-718

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ATTORNEY GENERAL

76-22

Honorable Carolyn Warner
Superintendent of Public Instruction
1535 West Jefferson
Phoenix, Arizona 85007

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Dear Mrs. Warner:

By letter dated November 7, 1975, you requested the opinion of this office as to whether Section 6 of Article XI of the Arizona Constitution requires an Arizona school district, without charge, to provide its common school pupils with school supplies and other materials necessary for those pupils to participate in the educational program of the district's common schools. If school districts are required to provide those supplies and materials without charge, your letter also requested us to describe the types of supplies and materials which must be so provided.

It has apparently been the practice of some Arizona school districts to request common school pupils to furnish, at their parents' expense, certain school supplies and other materials, which run the gamut from pencils, crayons and paper to gym shorts and materials for shop and home economics. The particular items which the pupils are expected to provide apparently vary from school district to school district and from school to school. The question then is whether this practice violates the second paragraph of Section 6 of Article XI of the Arizona Constitution, which provides as follows:

The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

Specifically, the question is whether the practice violates that part of the above-quoted constitutional provision which mandates that "a free school" be operated for common school



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pupils in every school district in the State for at least six months.

In Estate of Arizona Southwest Bank, 41 Ariz. 407, 19 P.2d 1063 (1933), the Arizona Supreme Court considered whether summer school enrollment fees could be charged at the high school level. The Court concluded that such fees violated Sections 6 and 9¹ of Article XI of the Arizona Constitution, as well as Arizona statutory law², which led "to the conclusion that instruction in high as well as in common schools shall be absolutely free." (Emphasis ours) 41 Ariz. at 511. The Court also noted "the right the law gives every high school pupil in the district to attend school free of any charge in the nature of a tuition or penalty to secure his attendance." 41 Ariz. at 515. However, the Court went on in dicta to specify that the right to attend high school free of charge "does not carry with it . . . the right to be furnished free . . . textbooks [which a student] must have if he is to gain the benefit from the school it was established to give him." 41 Ariz. at 515. In summary, Arizona Southwest Bank, supra, which relates to high school education, establishes by necessary implication the right to free instruction at the common school level; it does not reach the question of who must pay for textbooks and school supplies at the common school level.

In Carpio v. Tucson High School District No. 1 of Pima County, 21 Ariz.App. 241, 517 P.2d 1288 (1974), cert. den. 420 U.S. 982, the Arizona Court of Appeals was faced with a state and federal constitutional challenge to Arizona's practice of not furnishing free textbooks to the State's public high school students. In resolving the State constitutional challenge against the challenging students, the Court highlighted the differences between Sections 6 and 9 of Article XI of the Arizona Constitution. According to the Court, Section 9, which provides that the "laws

¹Article XI, Section 9, reads as follows in pertinent part:
"The laws of the State shall enable cities and towns to maintain free high schools, industrial schools and commercial schools."

²The statutory provision upon which the Court relied was Section 1025 of the Arizona Revised Code of 1928 (the successor section to which is now A.R.S. § 15-442, which is in the common school chapter of the present Education Code). That section required common schools to be maintained for at least eight months and for a longer period if funds permitted.

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of the State shall enable cities and towns to maintain free high schools," only requires the Legislature to permit public high schools to be free, but does not mandate that high schools be free. But the Court's interpretation of the second paragraph of Section 6 of Article XI is in direct contrast. In interpreting that provision, the Court stated as follows:

Art. XI § 6 of our Constitution provides for a free common school system. Pursuant to this provision, the Arizona legislature in 1912 enacted a law providing free textbooks to the common schools. Revised Statutes § 2825 (1913). Free textbooks for common schools have been provided by statute from 1912 to the present. The Constitution and our statutes have always been silent with respect to high school textbooks.
[Footnote omitted.]

* * * * *

Our legislature is delegated the authority to carry out the provisions of Article XI §§ 1 and 6. For more than sixty years it has provided for free textbooks only in the common schools. Such long acquiescence by our legislature is persuasive to this court.
517 P.2d at 1292.

The Carpio, supra, decision interprets the second paragraph of Section 6 to require a school district to provide its common school pupils with free textbooks, consistent with a long-standing interpretation given to that provision by the Legislature. Of course, the Legislature originally singled out textbooks only, because the decision was made to have the cost of the textbooks, but not other school supplies, borne by the State, rather than by the school districts, although that is no longer the case. Compare § 1048, Rev. Code of 1928, with A.R.S. §§ 15-1101, et seq. But the Legislature has not spoken further on this subject. It has not mandated that items in addition to textbooks be provided free, nor has it permitted school districts to require students to provide or pay for those other items. Given this status of things, and since the Carpio decision interprets the second paragraph of Section 6 to require a school district to provide its

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common school pupils with free textbooks (aside from any statutory compulsion to do so), it would then seem that all other school supplies and items which are necessary for those pupils to participate in a common school program should also be provided without charge by the district, assuming that those supplies and items would not ordinarily be purchased by those pupils or their parents, but for the participation of the pupils in the district's educational program. This conclusion is consistent with the interpretation given an almost identical California constitutional provision by the California Attorney General's office in a number of unpublished opinions. That provision, which is Section 5 of Article IX of the California Constitution, reads as follows:

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

The California Attorney General's office has interpreted that provision to require students in California common schools to be provided all school materials and other items necessary for those students to participate in the school's educational program. That interpretation relied in strong part upon Ward v. Flood, 48 Cal. 36 (1874), which held that the predecessor California constitutional provision to the above-quoted Section 5 required the state's common school pupils to be educated at public expense. 48 Cal. at 50-51.

Our conclusion is further supported by a previous opinion issued by this office on June 3, 1971, in which we decided that "[t]here can be no charge for texts, class materials, etc., for any grade below Grade 9." Concurring Opinion No. 71-10-C. It is also consistent with the great majority of decisions from other states interpreting somewhat similar state constitutional provisions. As a general matter, tuition, matriculation or registration fees, and fees for particular materials, activities or privileges have been held invalid in about twice as many decisions, from over twice as many jurisdictions, as they have been held valid. 41 A.L.R.3d 752 at 755. Granger v. Cascade County School District No. 1, 499 P.2d 780 (1972), is exemplary of the majority view. The Montana Supreme Court there strongly suggested that certain designated fees were illegal, as violative of a similar Montana

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constitutional provision³. The fees were for the use by pupils of laboratory, musical, home economics, trade training and commercial equipment, as well as fees for the purchase and use of athletic equipment, school supplies and workbooks. While it did not precisely determine which of the fees were illegal, the Montana Supreme Court indicated that the following test should be used to make the determination:

We believe that the controlling principle or test should be stated in this manner: Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system demanded by Art. XI, Sec. 1 of the Montana Constitution and additional fees or charges cannot be levied, directly or indirectly, against the student or his parents. If it is not, reasonable fees or charges may be imposed. 499 P.2d at 786.

In summary, in the absence of an inconsistent legislative interpretation, it is our belief that Section 6 of Article XI of the Arizona Constitution requires school districts to provide pupils attending public common schools in Arizona with those school supplies and other items which are necessary for those students to effectively participate in the educational programs of the school districts, provided that those supplies and items would not ordinarily be purchased by those students or their parents but for the participation of the students in the

³ Article XI, Section 1, Montana Constitution, which provided as follows:

It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

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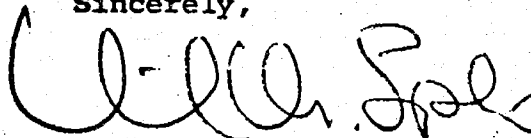
educational programs⁴. We think it well to point out, however, that Section 6 does not require a school district to furnish students with replacements for school supplies which are maliciously or recklessly damaged or destroyed or are repeatedly misplaced or lost by those students. In fact, our Supreme Court indicated in the Arizona Southwest Bank case that the right to attend school free of any tuition or other charge does not carry with it the further right to break or destroy property belonging to the district without paying for it. 41 Ariz. at 515.

At this point, we feel we should not more specifically designate the various items that must be furnished by the schools without charge. However, this office will cooperate with you and representatives of the State Department of Education to assure that this opinion is given effect throughout the State.

Should you have any questions concerning the foregoing, please let us know.

⁴Under this principle, school districts are not required, for instance, to provide clothing, as clothing is not an item peculiarly necessary for use in school, since people are clothed in public whether or not they are in school. See Paulson v. Minidoka County School District No. 331, 463 P.2d 935 (Idaho Supreme Court, 1970), fn. 9, 463 P.2d at 939. Nor would school lunches or tennis or gym shoes have to be provided. However, such items as gym or physical education uniforms would have to be provided if the school district requires or strongly encourages their use. Also, home economics and shop materials for the basic program should be provided, although a reasonable charge could be made if a student desired to take these home.

Sincerely,



Bruce E. Babbitt
Attorney General

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